

**DEPUTY PUBLIC PROSECUTOR v. TAN
AH GUAT.**

[App. Crim. Juris. (Brown, J.) January 17, 1947]

Liquors Revenue Ordinance, Sections 28 (1), 77 and 83—Possession of dutiable liquor—Forfeiture of Vehicle used for conveyance of the liquor—Evidence that vehicle has been seized is necessary—Definition of “intoxicating liquor” in Section 2 of Liquors Revenue Ordinance as amended by the Liquors Revenue (Amendment) Ordinance 1941—Certificate of Government Analyst under Section 427 of the Criminal Procedure Code—Departmental Titles (Alteration) Ordinance, 1937.

This was an appeal by the Deputy Public Prosecutor against the order of the learned Magistrate that a taxi in which alleged dutiable liquor had been found, should be restored to the respondent, who was the driver of the taxi. On the hearing of the appeal, it was contended for the respondent (1) that the record failed to disclose that the car had been detained or seized and (2) that the certificate of the analyst was defective.

Held, (1) the certificate from the “chemist” which was put in evidence in this case was inadmissible in evidence, as he was not a person whose certificate was admissible under Section 427 of the Criminal Procedure Code (as modified by the Departmental Titles (Alteration) Ordinance, 1947);

(2) that the certificate did not show that the alleged samsu was fit or intended for use as a beverage, which is one of the ingredients of the definition of “intoxicating liquor” in the Ordinance and there was therefore no proof that the alleged samsu was “intoxicating liquor”;

(3) that before an order for forfeiture of a vehicle can be made under Section 83 of the Liquors Revenue Ordinance, it must be shown (a) that an offence has been committed and (b) that the vehicle has been detained and as in this case no offence has been proved to be committed and there was no express evidence that the vehicle had been seized, no order of forfeiture could be made.

MAGISTRATE'S APPEAL.

A. W. Bellamy for the Appellant.

D. K. Walters (Wee Chong Jin with him) for the Respondent.

Brown, J. in an oral judgment said:—This is an appeal by the D.P.P. against the order of the learned

Magistrate that the taxi should be restored to the respondent.

It is a pre-requisite to an order for forfeiture being made under section 83 of the Liquors Revenue Ordinance that:—

- (a) An offence should have been committed.
- (b) That the vehicle should have been detained.

In this case the prosecution failed to prove that an offence had been committed. A certificate was put in evidence under section 427 of the Criminal Procedure Code from somebody describing him as Chemist, and he is not a person whose certificate is admissible under that section. But what was fatal to the prosecution case was that the certificate (even if it had been admissible) failed to prove that the alleged samsu was “intoxicating liquor” under the definition contained in the Ordinance. There are two ingredients of that definition:—

- (a) That it contained more than 2% alcohol by weight;
- (b) That it is fit (or intended) for use as a beverage.

The first was proved. The second was not. And I would observe that it is highly desirable (even though not strictly necessary) that the wording of the definition should be followed in the certificate.

Therefore I find that no offence was proved to have been committed. Further, there is no evidence (as there ought to have been) that the vehicle had been seized, and before an order for forfeiture can be made there must in my opinion be express evidence to this effect.

As No. 1 Accused pleaded guilty, and this case has been brought to my notice in which I find that the prosecution did not prove their case, I order that the conviction and sentence of No. 1 Accused be set aside, and if any part of the fine has been paid it must be refunded.

The appeal is dismissed.

Appeal Dismissed.

MALAYAN UNION REPORTS.

LYE FOOK SEN vs. PUBLIC PROSECUTOR
[App. Crim. Juris. (Carey, Ag. C.J., Malayan Union, Jobling and Brown, JJ., Singapore, December 13, 1946)]

Public Order and Safety Proclamation, Section 3 (1)—Assessment of Sentence—Principles on which

Court of Appeal will act in reviewing sentences thereunder.

The appellant had been found guilty by the assessors of carrying arms contrary to Section 3 (1) of the Public Order and Safety Proclamation and had been sentenced to death. The learned trial Judge stated that he was satisfied on the evidence that the appellant used the fire-arm, by firing at a soldier whom he believed to be attempting to apprehend him.